

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

MICHAEL D. BAUER d/b/a BAUER DEVELOPMENT COMPANY,

Appellant,

v.

RONALD M. BOWES, MILLICENT M. BOWES, and BELTON FOOD CENTER, INC.,

Respondents.

DOCKET NUMBER WD71479

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: October 18, 2011

APPEAL FROM

The Circuit Court of Cass County, Missouri
The Honorable Jacqueline A. Cook, Judge

JUDGES

Division Four: Hardwick, C.J., Pfeiffer, J., and Mesle, Sp.J.

CONCURRING.

ATTORNEYS

Michelle N. Higinbotham
Lee's Summit, MO

Attorney for Appellant,

John E. Franke, Nikki Cannezzaro, and Derek Johannsen
Kansas City, MO

Attorneys for Respondents.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

MICHAEL D. BAUER d/b/a BAUER)
DEVELOPMENT COMPANY,)
)
Appellant,)
v.)
)
RONALD M. BOWES, MILLICENT M.)
BOWES, and BELTON FOOD CENTER,)
INC.,)
)
Respondents.)

OPINION FILED:
October 18, 2011

WD71479

Cass County

Before Division Four Judges: Lisa White Hardwick, Chief Judge, Presiding,
Mark D. Pfeiffer, Judge, and Ann Mesle, Special Judge

Michael D. Bauer, doing business as Bauer Development Co., brought suit against his lessee for damages and against guarantors Ronald M. Bowes, Susan L. Bowes, and Millicent M. Bowes to guarantee payment for any such damages. Bauer appeals from the denial of his Motion for Judgment Notwithstanding the Verdict (“JNOV”) following the trial court’s entry of judgment upon a jury verdict in favor of the defendant guarantors. Bauer argues that he presented substantial evidence of a “submissible” breach of guaranty case and that the trial court erred in denying his motion for JNOV.

AFFIRMED.

Division Four holds:

Where, as here, the *defendant* is the prevailing party and the *plaintiff* has sought JNOV relief, the issue is not one of “submissibility.” Instead, the party bearing the burden of proof generally is not entitled to a directed verdict. As plaintiff, Bauer bore the burden of proving the elements of breach of guaranty by the guarantors, and the jury was entitled to disbelieve Bauer’s evidence in support of his case in chief. Likewise, the jury was entitled to believe that any of Bauer’s claimed “guaranty damages” were sustained after Bauer had terminated the Lease and

outside the contractual time frame of any personal guaranty executed by any of the guarantors. Either way, Bauer was not entitled to a directed verdict or JNOV.

Opinion by: Mark D. Pfeiffer, Judge

October 18, 2011

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.